

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

2007 KBE Legislative Agenda

Action Question:

What legislative proposals related to public education should the Kentucky Board of Education (KBE) endorse for consideration by the 2007 General Assembly?

History/Background:

Existing policy. Beginning in January, the 2007 General Assembly will meet for up to 30 legislative days. The first part of the session, the legislature will elect leadership, appoint committees, and introduce legislation. After completing its organizational duties, the General Assembly will adjourn and reconvene on the first Tuesday in February to further consider legislation. Any bill raising revenue or appropriating funds must be agreed to by three-fifths of all members elected to each chamber.

The Kentucky Board of Education considers adoption of a legislative agenda prior to each session of the General Assembly. Generally, only bills with broad support are passed during the short session.

Items to Consider for Inclusion in the KBE Legislative Agenda

Approach to Determining the Scope of the KBE Legislative Agenda

At the October meeting, the members of the Board discussed limiting the agenda to four or five issues and members were asked to submit their priorities. Strongest support (more than half of the responses submitted) was for the following proposals: the superintendent's role in hiring the principal, prevailing wage, and nonresident student agreements. A summary of these issues, along with options from which the Board can choose, is provided.

Principal Selection

For several legislative sessions, the Kentucky Board of Education legislative agenda has included clarifying the language on principal selection to clearly indicate that the superintendent recommends candidates for the position and the council selects from among those recommended. This would continue the most common interpretation of the law prior to the Supreme Court ruling in *Back v. Robinson*. The rationale is that both the superintendent and the school council should have a common understanding of the criteria for candidate selection and come to a consensus on the best candidate if at all possible. But in any event, the person selected for principal should have the

recommendation of the superintendent. Legislation relating to this issue was highly controversial and unsuccessful in 2004 and 2005.

Currently, the law does allow the superintendent or the highly skilled educator, based on the findings of the scholastic audit, to name the principal of a school that is Level 3 for two successive biennia. The conclusion of the 2006 accountability cycle will be the first time this provision may be applied. The Board could also consider expansion of these criteria.

Options:

- Require the school council to select a principal from among candidates recommended by the superintendent
- Expand the criteria for low-performing schools (beyond Level 3 for two successive biennia) for which either the superintendent or the highly skilled educator would select the principal
- Take no action

Nonresident Student Options

“Intradistrict” open enrollment laws allow choice of public schools within district boundaries, while “Interdistrict” open enrollment laws allow choice of public schools across district boundaries. Both types of laws can be either “Mandatory,” which require districts to allow students to transfer to the school of their choice, or “Voluntary,” which allow districts to choose whether to allow students to transfer to the school of their choice. For example, Kentucky’s law relating to nonresident student agreements is an example of a voluntary interdistrict open enrollment law, while the regulation concerning transfer options for students in low-performing schools to transfer to a successful school is a mandatory open enrollment provision, which may be intradistrict or interdistrict. The federal No Child Left Behind Act transfer provision for schools that fail to make adequate yearly progress is another example of a mandatory open enrollment provision that may be intradistrict or interdistrict.

Nonresident student agreements. Current law allows students to attend a school district outside the district of residence with state funding if an agreement has been reached between the two districts. From 1992 until 2005, a local district that could not reach an agreement concerning nonresident students could appeal to the Commissioner of Education and could further appeal the Commissioner’s decision to the Kentucky Board of Education. The Franklin Circuit Court held that the standard for review, which at the time, was a requirement for the Commissioner and the KBE to “... give preference to the best interest of the individual student”, is a vague standard, does not have legal standing because it is unclear, and is an unconstitutional delegation of power by the General Assembly. Because of the court ruling, which was not appealed, there is currently no appeal if the two districts cannot agree.

In 2005, the General Assembly deleted the “best interest of the individual student” standard. The law could be further amended to provide clearer guidance on the review

standard for an appeal. The statute could specify that the board and the commissioner may consider the impact of the agreement on all the students in the districts involved. Criteria that could be considered include: the impact on programs, school facilities, transportation and staffing, and the performance of the two school districts involved.

Transfer from low performing schools failing to meet their goals. The Kentucky Board of Education is authorized under KRS 158.6455(4) to include transfer provisions as part of the sanctions for schools failing to meet their goals. By administrative regulation, a student attending a Level 3 school for two biennia may transfer to a successful school in the district or the superintendent is to make arrangements with a neighboring district. The school district in which the student is enrolled receives the SEEK funding, and the student's resident district is responsible for all transportation costs for the transferring student. The Board could consider requiring any district with a Level 3 school for two biennia to enter into a nonresident student agreement with all receptive neighboring districts operating schools meeting their goals to expand choice. The status of the requesting student's school could also be a criterion for approving nonresident disputes. Consideration could be given to requiring the sending district to transfer an amount equal to the local revenue per pupil up to the amount of the receiving district's local revenue per pupil to assure that the receiving district's taxpayers are not subsidizing the transfers.

Options:

- Provide grounds for appealing nonresident student agreements to the Commissioner and the Kentucky Board of Education
- Require a district with a Level 3 school for two biennia to make arrangements with all neighboring districts, which have successful schools at the same grade organizational level available for student transfer, if the district does not operate a successful school. Consider transfer of the local revenue per pupil up to the amount the receiving district's local revenue per pupil
- Recommend an LRC study considering all factors and making recommendations for legislative enactment
- Take no action

Prevailing Wage

Since 1996, state law has required construction workers on state, school district or local government public construction projects costing \$250,000 or more to be paid at least the prevailing wage of the locality in which the project is built. Prevailing wage proponents argue that the higher wages result in better quality construction that is built more efficiently by more highly skilled and productive workers. Opponents believe that the law results in higher costs with little evidence of improved quality. Some also argue that it reduces competition because of the limitations placed on the contractor and the increased paperwork.

In December 2001, the Kentucky Legislative Research Commission's Program Review and Investigations Committee completed a study of Kentucky's prevailing wage laws and procedures. The report found "There was substantial evidence that prevailing wage laws did increase the initial costs of construction. It was unclear, however, whether the

requirements resulted in higher quality construction.” Based on responses to a staff survey to school district superintendents (116 of 176 school districts responding), 95.7% districts reported that prevailing wage had increased the initial cost of construction and only 4% thought the increased wages improved quality. In addition, the Program Review and Investigations report found that the method for calculating the prevailing wage does not provide representative wages and that the wages are often higher than average wages paid in the geographical area. Other external studies reviewing the impact of prevailing wage on Kentucky school construction have found little or no significant increase in the cost of school construction, but the Program Review and Investigation study noted that several of the studies omit factors affecting construction costs.

The study made a number of recommendations requiring legislative changes that would help yield prevailing wages that would be more representative of local wages. These include:

- Use a data collection that provides better coverage of all construction workers in an area, such as a survey of contractors doing commercial contractors with follow-up with those who do not respond;
- Discontinue use of the majority wage;
- Eliminate wages paid to workers on previous prevailing wage projects from the determinations for later projects;
- Reduce the number of unrelated counties that are grouped together;
- Cease using the federal prevailing wage if the above changes are made; and
- Validate evidence submitted for prevailing wage determinations.

The 2006 Kentucky Board of Education legislative agenda included suspending the prevailing wage requirement for school construction for two to five years to study the impact so that a more accurate determination could be made about the impact of the prevailing wage law. Consideration could also be given to process for establishing a more representative wage. Legislation has been introduced in previous sessions to repeal prevailing wage with no success and much opposition by the labor unions.

Options:

- Suspend the prevailing wage requirement for school construction for two to five years to study the impact so that a more accurate determination could be made about the impact of the prevailing wage law
- Seek changes to make the prevailing wage more representative of the region’s actual wages
- Take no action

SEEK and Recommendations from the School Facilities Evaluation Task Force

Proposed changes in the SEEK formula and the School Facilities Evaluation Task Force recommendations were also discussed in October. The Board indicated that only the proposed change for SEEK on *accessible* assessments was supported for consideration

during the 2007 session. Members also asked for more information on "In-Lieu-Of" Taxes and Federal Impact Aid. All three of these items are included on Attachment A and staff will be bringing additional data to the meeting to aid in deciding whether to include these in the final legislative agenda.

Proposed legislative items requiring statutory change from The School Facilities Evaluation Task Force study were presented in October and are included in Attachment B. The Board will need to give staff direction on whether to include these in its legislative agenda, or let the recommendations come forward as a package from the Task Force and then endorse some or all of the package.

Studies

Several studies and initiatives are underway that may result in recommendations requiring legislative changes, including:

- School Calendar;
- School Facilities Evaluation Committee;
- SEEK study;
- Assistance to Schools not Meeting Student Achievement Goals;
- School Interoperability Standards; and
- Pupil Transportation.

The Board may want to consider endorsing study recommendations when available.

Staff Recommendation and Rationale:

The Kentucky Board of Education should endorse those proposals or positions it deems appropriate for consideration by the 2007 General Assembly.

Impact on Getting to Proficiency:

One of the guiding principles in formulating legislative proposals is the goal of reaching proficiency by 2014.

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